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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,652

03/24/2004

Lon T. Spada

3126

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7590

11/21/2006

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EXAMINER

KAUFMAN, JOSEPH A

ART UNIT

PAPER NUMBER

3754

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/808,652  
Filing Date: March 24, 2004  
Appellant(s): SPADA ET AL.

**MAILED**  
**NOV 21 2006**  
**GROUP 3700**

\_\_\_\_\_  
Walter A. Hackler  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed September 18, 2006 appealing from the  
Office action mailed May 3, 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: the rejection of claim 1 under 35 USC 112, first paragraph is not related to the "novelty" description requirement, but the written description requirement.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2004/0140319	GERONDALE	7-2004
6,152,324	BAUDIN	11-2000

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 stands rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The concave surface subtending the aperture and the concave and convex surfaces having equal radii are not supported by the original disclosure. Please note that the changes to the paragraph on page 5 are all new matter except for the seat having the convex surface. The drawings and the rest of the original disclosure do not support the concave surface and the equal radii.

Claim 1 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Gerondale in view of Baudin. Gerondale shows a nozzle 7, neck seen in Figure 2; shoulder 2; aperture 8, 9; ring surrounded by 5; threads 16; cap 4; top and skirt seen in Figure 1; seat at 3; grooves 17; and lip/seal means 5 or the portion engaging the ring after strip 5 has been removed. Gerondale lacks the concave and convex surfaces of the aperture and seat having equal radii and not entering the aperture. Baudin shows such an arrangement in Figure 3 represented by numerals 20 and 40. It would have been obvious to one of ordinary skill in the art to provide the matching concave and

Art Unit: 3754

convex structures as taught by Baudin on the device of Gerondale in order to provide a more complete seal and thus help prevent drying of the product around the aperture (column 5, lines 14-22).

**(10) Response to Argument**

**35 U.S.C. 112, first paragraph rejection**

Appellant contends that the concave surface and the equal radii are shown in the drawings as originally filed. It appears to the examiner that there is no concave surface in the figures as the top appears flat regardless of the fact that they are in cross section. Further, there is no way to determine the radii as there appears to be no concave surface. Also, there is no statement that the drawings are to scale and, therefore, the drawings could not be used to determine the equal radii even if the concave surface was shown.

**35 U.S.C. 103(a) rejection**

Appellant contends that as Baudin shows a hinge, that the combined device would not teach rotation between the parts. Baudin was merely used to teach the concave and convex portions; the Gerondale reference clearly shows the rotatable connection. As the references have proper motivation for combining, the rejection stands. Note, a physical combining of all of the structures of both references is not required for a proper combination.

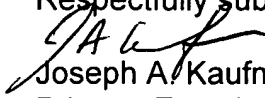
**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


Art Unit: 3754

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Joseph A. Kaufman  
Primary Examiner  
Art Unit 3754

Conferees:

Kevin Shaver   
Eric Keasel 